

Document: Proposed Rule, **Register Page Number:** 26 IR 3747

Source: August 1, 2003, Indiana Register, Volume 26, Number 11

Disclaimer: This document was created from the files used to produce the official CD-ROM Indiana Register. However, this document is unofficial.

**TITLE 905 ALCOHOL AND TOBACCO
COMMISSION**

Proposed Rule
LSA Document #03-97

DIGEST

Amends 905 IAC 1-36-2 to include the requirement that an appeal from the commission's determination on a permit must be verified and state the grounds for objection to the commission's action. Clarifies the intervention procedure. Provides that the 15 day period to appeal a determination does not begin until the appellant receives notice of the commission's action. Effective 30 days after filing with the secretary of state.

905 IAC 1-36-2

SECTION 1. 905 IAC 1-36-2 IS AMENDED TO READ AS FOLLOWS:

905 IAC 1-36-2 Review of local alcoholic beverage board's approval or denial of an application for an alcoholic beverage permit

Authority: IC 7.1-2-3-7

Affected: IC 4-21.5-2-6

Sec. 2. (a) After a local board recommends approval or denial of an application for a new permit, including a transfer application or renewal of an existing permit, the commission shall act promptly upon the local board's recommendation. If there was no remonstrance before the local board and if the commission approves the application, the commission shall issue the permit to the applicant. If either there was a remonstrance against the application before the local board or the commission disapproves the application, the commission shall give personal notice of its action or written notice of its action by certified mail to the applicant and to any remonstrator. For purposes of this rule, "remonstrator" means a person who appeared, personally or by counsel, as a remonstrator against the application at the local board hearing and identified himself to the local board, stating his name and address or telephone number to the board at the hearing.

(b) Upon receipt of notice of the commission's action under section 1(a) of this rule, an applicant or a remonstrator shall have fifteen (15) days to file any objection to the commission's action and to request an appeal hearing before the commission. **Such appeal must be in writing and signed under the penalties for perjury. Said appeal must clearly state the grounds for objection to the commission's actions.** The objections of any remonstrator shall also be accompanied by a **separate** petition for intervention stating facts ~~which~~ **that** demonstrate that the petitioner will be aggrieved or adversely affected by the commission's action. A copy of the remonstrator's objections and petition for intervention shall be served by the remonstrator on the applicant by certified mail unless the remonstrator is not represented by counsel. In such case, the commission will serve the remonstrator's ~~pleading(s)~~ **pleading or pleadings** on the applicant. Failure of the applicant to file objections or failure of a remonstrator to file objections and a petition for intervention within the fifteen (15) day period shall constitute a waiver of any appeal hearing from the commission's action. **The fifteen (15) day period does not begin to run until the commission rules on the local board's recommendation.** Absent exigent circumstances, the commission shall deny the petition for intervention of any person who did not appear personally or by counsel at the local board hearing. Upon receipt of an applicant's objections, the commission shall set the applicant's objections for hearing.

(c) If the objection is based on the denial of an application or renewal of an existing permit, the applicant may request an extension of the life of the permit to allow him **or her** to continue operating, pending the appeal procedure. If the commission issues the extension, the applicant shall pay the required fee and shall be allowed to operate until notified by the commission that the extension

is terminated by either personal notice or written notice by certified mail to the applicant's last known address as stated on his **or her** application for said permit. Upon receipt of said notification, **the** applicant shall have ten (10) days to continue operating, and at the expiration of the ten (10) days he **or she** must cease selling alcoholic beverages. **At any time during the appeals process**, the commission, at its discretion, may allow the applicant to place the denied permit into escrow and allow a reasonable time for the applicant to sell said permit to a bona fide purchaser for value in an arm's length transaction subject to the approval of the commission.

(d) Upon receipt of a remonstrator's objections and petition for intervention under subsection (b), the commission shall review the petition and determine whether the remonstrator should be permitted to intervene in the matter. In making its determination, the commission shall consider whether the remonstrator has **alleged facts that if proven show** that he or she ~~will~~ **would** be personally aggrieved or adversely affected if the application for permit is granted. If the commission finds that the remonstrator ~~would be aggrieved or adversely affected~~, **has alleged such facts**, he **or she** shall be allowed to intervene, ~~and~~ notice of such shall be sent to the applicant, and ~~the remonstrator~~ and the intervening remonstrator's objections shall be set for hearing. If the commission finds that the remonstrator should not be permitted to intervene, it may deny the remonstrator's request for hearing. As used hereafter in this rule, "intervening remonstrator" means a remonstrator that has been granted permission to intervene by the commission.

(e) An applicant, a remonstrator, or an intervening remonstrator who has filed objections to the commission's determination may request and pay a deposit in the amount of fifty dollars (\$50) for the preparation of the local board transcript, and, as soon as it is prepared, he **or she** shall pay any final amounts due.

(f) The commission shall give the applicant and any remonstrators or intervening remonstrators notice of the appeal hearing by certified mail at least ten (10) days prior to the hearing. The notice shall state the time and place of the hearing. At the discretion of the commission, the hearing may be conducted by the full commission, any individual member of the commission, or a duly authorized agent of the commission. (*Alcohol and Tobacco Commission; 905 IAC 1-36-2; filed Feb 20, 1991, 5:05 p.m.: 14 IR 1446; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 25, 2003 at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on a proposed amendment concerning appellate procedures from commission determinations on permits. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mary L. DePrez
Chairperson
Alcohol and Tobacco Commission